IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.15182 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. GREEN PLANET

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 15182 of 2004

MRS. YOGINI V. PARIKH for Petitioner

MS. HINA DESAI for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/02/2005

ORAL JUDGEMENT

1. Rule.

Ms.Hina Desai, learned Advocate, waives service of Rule on behalf of the respondent.

At the request of Mrs.Yogini V.Parikh, learned Advocate for the petitioner, and with the consent of Ms.Hina Desai, learned Advocate for the respondent, the matter is taken up for final disposal today.

2. The petitioner being aggrieved of Orders dated 30th June, 2003 and 30th September, 2004 passed by the respondent-Authorities under Section-7(A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") is before this Court.

3. The main contention of the petitioner is that the authorities, while passing order under Section-7(A) of the Act, have not taken note of the payments made by challans, copies of which are produced at Annexure `D' to the petition, running from pages 25 to 38. The learned Advocate for the petitioner submitted that had the authorities taken into consideration the aforesaid amount, the calculation would have been different and Orders dated 30th June, 2003 and 30th September, 2004 would not have been passed for the amount mentioned therein. The learned Advocate also submitted that interest of justice will be served if the authorities are directed to take into consideration the amount, which is paid by the petitioner, and also of the fact that the petitioner is ready and willing to pay the amount of Rs.18,000=00 (Rupees Eighteen Thousand Only), which is payable according to the petitioner. The learned Advocate further submitted that the fact that the petitioner could not represent its case before the authorities has resulted into passing of the orders.

4. Ms.Hina Desai, learned Advocate for the respondent, submitted that the authorities had issued notices and had fixed the matter for hearing on various dates, details of which are set out in Order dated 30th June, 2003. She further submitted that the authorities had no alternative but to proceed with the matter as nobody was present on behalf of the petitioner. Be that as it may. The fact remains that the authorities have not taken into consideration the amount, which is paid by the petitioner vide challans, which are produced at Annexure `D' to the petition. Besides, the bona fides of the petitioner are not under cloud. Therefore, this Court, in its considered opinion, thinks that interest of justice will be served by quashing and setting aside Orders dated 30th June, 2003 and 30th September, 2004 with a direction that the authorities shall give an opportunity to the petitioner, on petitioner depositing the aforesaid amount of Rs.18,000=00 for three months i.e. November-2000, December-2000 and January-2001. The authorities shall pass fresh order after taking into consideration the amount paid and the case of the petitioner.

4. The petition is accordingly allowed. Rule is made absolute. At the request of Ms.Desai, who insisted that as the petitioner had not remained vigilant in attending the proceedings before the Department, costs be awarded. As a goodwill gesture, an amount of Rs.1,100=00, (Rupees one thousand and one hundred only) shall be paid by the petitioner to the Department towards the costs.

(Ravi R. Tripathi, J.)

kamlesh*